IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6391 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

USHABEN VASANTKUMAR SHETTY WIFE OF DETENU

Versus

COMMISSIONER OF POLICE SURAT

Appearance:

MR NM KAPADIA for Petitioner

MR KT DAVE ASSTT GOVT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 11/01/2000

ORAL JUDGEMENT

#. Heard Mr. N.M.Kapadia, learned advocate for the petitioner and Mr.K.T.Dave, learned AGP appearing for respondents No. 1,2 & 3.

#. The detention order dated 13-4-1999 passed by

respondent No. 1 - The Commissioner of Police, Surat against the detenu - Vasantkumar Babubhai Shetty in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by the wife of the detenu - Ushaben Vasantkumar Shetty in the present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu, a copy of which is produced at Annexure - B to the petition interalia discloses that a prohibition case vide C.R.No : 194 of 1999 was registered against the detenu at Katargam Police Station and Indian made Foreign Liquor was seized from the possession of the detenu. The ground further indicate that two witnesses on assurance of their anonymity have given statement dated 8-4-99 and 9-4-1999 respectively against the prejudicial activities of the detenu. That the said statements disclose the alleged incidents dated 21-2-99 and 29-3-99 respectively. That on the basis of the aforesaid material, the respondent No.1 has come to the conclusion that the detenu is the bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial activities, detention order is necessary and hence the impugned order is passed.

#. It has been submitted at bar on behalf of the petitioner that the detenu was on bail on 22-3-1999 in respect to the prohibition case registered against him. That thereafter, a statement of anonymous witnesses have been recorded and impugned order is passed. However, while passing the impugned order, the detaining authority has failed to consider the less drastic remedy like cancellation of bail under Section 437(5) of CrPC and as such, subjective satisfaction of the detaining authority was vitiated on the said non application of mind and order is rendered invalid.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. In the instant case, the detaining authority has stated in the grounds of detention that detenu was released on bail and that there is likelihood that having got himself released, the detenu would continue his bootlegging activities and thereby, the detention order is necessary. The grounds do not disclose any fact whereby, it could be reasonably inferred that the detaining authority has considered the less drastic remedy like claiming the cancellation of bail granted to the detenu. Under these circumstances, I am constrained to hold that the impugned order is bad in law, on account of non application of mind.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 13-4-1999 passed by respondent No. 1 - The Commissioner of Police, Surat against the detenu - Vasantkumjar Babubhai Shetty is hereby quashed and set aside. The detenu - Vasantkumjar Babubhai Shetty is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

Date : 11-1-2000 [A.K.Trivedi, J.]

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